

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X Index No. 2017-701298  
EFRAT GAM and SLIM'S BAGLES & BIALYS, INC.,

Plaintiffs,

-against-

**SUPPLEMENTAL  
VERIFIED COMPLAINT**

JOSEPH DVIR,

Defendant.

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Plaintiffs, by Farley & Kessler, PC, their attorneys, herein allege the following as and for their verified complaint against Defendant Joseph Dvir.

**NATURE OF THE CASE**

1.) Plaintiff, Efrat Gam ("Gam") and Defendant, Joseph Dvir ("Dvir") each own fifty (50%) percent of the common stock of Slim's Bagles & Bialys, Inc. ("Slim's Bagels")<sup>1</sup> or (the "Corporation") and are its sole officers and directors. Plaintiffs bring this action seeking legal and equitable remedies necessitated by the Defendant's blatant and unlawful conduct including but not limited to:

- Locking Gam out of the business premises.
- Refusing to pay Gam salary or business income distribution.
- Retaining the Corporation's income for himself.
- Refusing to provide access to Gam of all business records.
- Diverting the Corporation's assets to himself and/or his new business(es) – The Sugar Café and/or Getting Hungry.
- Stealing.
- Misrepresenting and withholding business receipts and records.

<sup>1</sup> The filed Corporate name mis-spells Bagels as Bagles.

**PARTIES**

- 2.) GAM is a resident of the State of Florida.
- 3.) Upon information and belief, DVIR is a resident of the County of Queens, City and State and of New York.
- 4.) At all relevant times herein, GAM is and has been 50% shareholder and officer and director of the Corporation.
- 5.) At all relevant times herein, DVIR is and has been 50% shareholder and officer and director of the Corporation.
- 6.) Slim's Bagels is a domestic corporation organized on 11/2/99 in the County of Queens, City and State of New York.
- 7.) The Corporation owns and operates a bagel store (the "Bagel Store") located at 254-31 Horace Harding Boulevard, Little Neck, New York.

**JURISDICTION AND VENUE**

- 8.) Jurisdiction as to the Defendant is based upon CPLR §301 and §302 in that the Defendant either resides in or maintains a place of business in the State of New York.
- 9.) Venue is proper pursuant to CPLR § 503 in Queens County because the tortious and unlawful activity occurred in Queens County and the principal of business of the Corporation is conducted in the County of Queens.

### COMMON FACTS TO ALL CLAIMS FOR RELIEF

10.) The bagel store has been in constant operation by the Corporation since November, 1999 and is located in a busy shopping center at the Northwest corner of Little Neck Road and Horace Harding Expressway, in Little Neck, New York.

#### The Purchase

11.) Slim's Bagels was purchased in 1999 for the sum of \$467,000. with \$167,000. down payment and \$300,000. by way of an eight (8) year promissory note which was paid off in 2007.

12.) Plaintiff GAM and Defendant DVIR equally contributed towards the down payment sum of \$167,000.

#### Operation and Management of the Store

13.) In November, 1999, first day of business, Plaintiff GAM began working full time at the bagel store.

14.) GAM was paid \$1,000. salary per week.

15.) DVIR was a non-working partner but was paid \$250. per week.

16.) GAM continued as the working partner through 2007 at which time their positions inverted and DVIR became the working partner.

17.) At that point, DVIR began collecting \$1,000. per week in salary.

#### Reinvestment in Slim's Bagels

18.) At the end of 2008 and throughout 2009, Plaintiff GAM invested \$106,000. towards renovation costs of the bagel store.

19.) Upon information and belief, DVIR invested a like amount.

**DVIR's Other Business(es) – The Sugar Café and Getting Hungry**

20.) Upon information and belief, DVIR is the sole owner and operator of the Sugar Café NYC located at 200 Allen Street, New York, New York, and Getting Hungry located at 225 Varick Street, New York, New York.

21.) Upon information and belief, Sugar Café NYC was organized in 2013.

22.) DVIR in his web advertising for the Sugar Café NYC bills himself as the “proprietor of Slim’s Bagels”.

23.) Upon information and belief, since Sugar Café’s and Getting Hungry inception, DVIR has spent considerable time, effort, and money in his new business venture to the detriment of Slim’s Bagels.

24.) DVIR is no longer a full time employee of Slim’s Bagels but, rather, appears at the Little Neck business premises sporadically but still collects \$1,000. per week salary.

25.) Upon information and belief, Defendant is billing expenses to Slim’s Bagels for such things as supplies, renovation and repair costs which are, in fact, expenses attributable to the Sugar Café and/or Getting Hungry and not Slim’s Bagels.

**4Q 2016 Events**

26.) In November, 2016, DVIR failed to pay the usual \$5,000. monthly distribution to GAM and informed GAM that there would be “no further payments”.

27.) On December 3, 2016, GAM appeared at the store premises.

28.) On December 6, 2016, DVIR changed the locks at the store premises and

told GAM not to appear there.

29.) From October, 2016, to February, 1, 2017, no monies were paid to GAM from the business operations of Slim's Bagels and DVIR has, instead, retained all monies for himself.

### **2017 Events**

30.) In the course of preliminary inspection of the books and records of the company, Plaintiff discovered that Defendant, without authorization, and without Plaintiff's knowledge, permission, or consent, and contrary to company policy and the express agreement of the Shareholders, paid himself more than \$216,289. in the years 2010 – 2013 and, additionally, used company funds to pay his personal credit card, \$69,543.61 in the years 2010 – 2017.

31.) Since on or about February 1, 2017, Plaintiff has re-assumed her position as the fulltime working partner of the bagel store and Defendant appears at the store on average, less than four (4) hours per week.

### **DVIR's Fraudulent Concealment Giving Rise to Estoppel**

32.) As an officer, director, and shareholder of the Corporations, DVIR owes a fiduciary duty to Plaintiff and the Corporations including but not limited to the timely, truthful dissemination of all information relating to the corporation's business affairs.

33.) As detailed above, DVIR interfered with Plaintiff and the Corporations' ability to obtain full and timely accurate information and intentionally and fraudulently concealed the details and nature of certain transactions undertaken by DVIR and/or his cohorts and/or his shadow company The Sugar Café.

34.) As a direct and proximate result of the intentional fraudulent concealment of the details of the foregoing improper transactions undertaken by DVIR and/or his cohorts and/or his shadow company The Sugar Café, Plaintiff and the Corporation were prevented from determining the actual nature of these transactions and thus did not have sufficient information concerning the true facts and circumstances giving to rise to legal relief.

35.) Based upon DVIR's fraudulent acts of concealment, DVIR is estopped from limiting or circumventing his legal responsibilities and liabilities set forth herein by relying upon any applicable statute of limitations in this matter.

#### **No Adequate Remedy**

36.) It is respectfully submitted that the Plaintiffs have no adequate remedy for the wrongful conduct of DVIR and will suffer irreparable injury absent the court's granting of and entering a permanent junction of relief.

37.) GAM desires to recapture control of the Corporation and operate the bagel store in an efficient, legal, and appropriate manner now and for an indefinite time in the future.

38.) DVIR has wrongfully asserted complete dominion and control over the bagel store to the detriment of Plaintiffs, retaining all income and profits from the Corporation, which actions threaten permanent and incalculable harm to the Corporation depriving GAM of her many years of hard work growing the business as well as her considerable investment and equity in the Corporation.

39.) Plaintiffs will suffer irreparable injury unless DVIR's improper and illegal conduct is stopped.

**Demand Futility**

40.) Any required proffer of a demand on the Corporation's board of directors is excused as the Corporation has only two directors one of whom is the Defendant.

41.) DVIR's interests are so intertwined with the allegations contained in this complaint as to render Demand Futile.

42.) The challenged acts and transactions of DVIR which form the basis of this complaint are not the product of a valid exercise of business judgment but, rather, are self-interested, illegal acts and transactions by DVIR.

**FIRST CAUSE OF ACTION – UNJUST ENRICHMENT**

43.) Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 42 of this complaint as fully set forth at length herein.

44.) DVIR's improper, deceitful, disloyal and unlawful actions have resulted in a loss of income and profits and salary to GAM and the Corporation and have unjustly enriched DVIR.

45.) It would be unjust and unfair to allow DVIR to retain custody and control of the assets and profits of the business which were rightly and properly owned by the Corporation and GAM.

46.) Equity Demands Restitution.

47.) By reason of the foregoing, GAM and Corporation have been damaged by Defendant in an amount to be determined at trial, but in no event no less than nine hundred thousand (\$900,000.) dollars, together with interest thereof.

**SECOND CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY (INDIVIDUAL)**

48.) Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 47 of this complaint as fully set forth at length herein.

49.) By virtue of his position as an officer, shareholder and director of the Corporation, DVIR owes all the duties of a fiduciary including, inter alia, the duties of care, loyalty, good faith, fair dealing, and an obligation to protect the best interests of his partner GAM.

50.) DVIR has breached his fiduciary duties to GAM by repeatedly failing to act in the best interests of the Corporation and GAM including but not limited to locking GAM out of the business premises, refusing GAM access to the books and records of the company, and retaining all the income and profits of the Corporation for his sole benefit, and diverting business assets to himself and/or his new business(es), the Sugar Café and/or "Getting Hungry".

51.) DVIR has breached his fiduciary duties and also his duties of good faith, loyalty, trust and confidence by profiting at GAM's expense.

52.) As a direct and proximate cause of DVIR's breaches of fiduciary duty and loyalty to GAM, GAM has suffered financial loss.

53.) By reason of the foregoing, GAM has sustained money damages in a sum to be proven at trial but, in no event, less than nine hundred thousand (\$900,000) dollars, together with interest and punitive damages.

**THIRD CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY (DERIVATIVE)**

54.) Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 53 of this complaint as fully set forth at length herein.

55.) As a shareholder of the Corporation, GAM is entitled to bring a derivative action on behalf of the Corporation.

56.) As a fifty percent shareholder and officer of the Corporation, DVIR has a fiduciary duty to GAM and to the Corporation.

57.) DVIR has breached his fiduciary duties to the Corporation by, among other things, intentionally diluting, diverting, and looting the assets of the Corporation, and by devoting his time and efforts to his new business enterprise(s), the Sugar Café and/or Getting Hungry.

58.) As a direct and proximate result of this wrongdoing, the Corporation has been damaged in a sum to be proven at trial, but, in no event, less than nine hundred (\$900,000.) thousand dollars.

59.) Insofar as DVIR's conduct as alleged herein is intentional and willful, punitive damages should be assessed against him.

60.) DVIR has forfeited his rights to any distribution(s) and salaries paid to him by the Corporation who has sustained substantial compensatory and punitive damages in an amount to be determined at trial but, in no event, less than nine hundred (\$900,000.) thousand dollars, together with lawful interest.

#### **FOURTH CAUSE OF ACTION – INJUNCTION**

61.) Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 60 of this complaint as fully set forth at length herein.

62.) At all relevant times, GAM was and still is a fifty percent stockholder of the Corporation.

63.) DVIR's mismanagement of the Corporation and misappropriation of the

Corporation's assets and overall dereliction of his fiduciary duties owed to GAM and the Corporation has caused and will continue to cause irreparable harm to GAM and the Corporation and to tie considerable goodwill built through years of business operations.

64.) There is no adequate remedy at law to redress DVIR's intentional actions.

65.) By reason of the foregoing, Plaintiffs are entitled to a preliminary and permanent injunction enjoining Defendant DVIR, his agents, employees, successors, attorneys or any persons or entity acting in concert with or on his behalf from the following:

- A. Interfering with GAM's access to any and all business records and/or the actual business location.
- B. Transferring withdrawing, pledging, assigning or otherwise using any funds or assets of the Corporation without the advance written consent of the plaintiff GAM.
- C. Endorsing, cashing, depositing or negotiating a check, wire transfer and from withdrawing, pledging, cashing, or otherwise using any funds on deposit with any banking institution in any accounts in the name of the Corporation without the advance written consent of GAM.
- D. Interfering with any existing contract and entering into any contracts with any third-parties including but not limited to any vendor or customer by or on behalf of the Corporation without the advance written consent of GAM.
- E. Altering, concealing, removing, destroying or otherwise impairing any stock, asset, or books or records of the Corporation.

**FIFTH CAUSE OF ACTION - CONVERSION**

66.) Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 65 of this complaint as fully set forth at length herein.

67.) DVIR has damaged the Corporation through his conduct including but not limited to misappropriation of the Corporation's assets for his personal benefit, theft, waste and self dealing.

68.) By reason of the foregoing the Plaintiffs have been damaged by the DVIR in an amount to be proven at trial, but in no event, less than nine hundred (\$900,000.) thousand dollars.

**SIXTH CAUSE OF ACTION – ACCOUNTING**

69.) Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 68 of this complaint as fully set forth at length herein.

70.) DVIR's self-dealing and looting of Corporation's assets has threatened the existence of the Corporation to the detriment of the Plaintiffs.

71.) An accounting is necessary to determine the rights of the party.

72.) By reason of the foregoing, Plaintiffs are entitled to an independent audit of the books and records of DVIR and for an accounting of his income and expenses along with such other and further relief as this court deems just and proper.

**SEVENTH CAUSE OF ACTION – REMOVAL**

73.) Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 72 of this complaint as fully set forth at length herein.

74.) As a result of DVIR's actions, and his breach and dereliction of his duties

to the Plaintiffs which said action will, upon information and belief, continue and indeed accelerate, to the detriment of the Plaintiffs, DVIR should be removed as an officer of the Corporation for cause.

75.) By reason of the foregoing, Plaintiffs seek a declaratory judgment removing DVIR as an officer of the Corporation pursuant to BCL § 716.

### **EIGHTH CAUSE OF ACTION – ATTORNEY'S FEES**

76.) Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 75 of this complaint as fully set forth at length herein.

77.) As a result of the misconduct and illegal actions of DVIR, Plaintiffs were compelled to bring this action to protect their rights and seek legal and injunctive relief against DVIR including his removal as an officer of the Corporation pursuant to BCL § 716.

78.) BCL § 626(a) permits the court to award attorney's fees in favor of the Plaintiffs against the DVIR in a derivative action.

79.) By reason thereof, Plaintiffs have been damaged by DVIR in an amount to be determined by trial but in no event less than ninety (\$90,000.) thousand dollars.

### **DEMAND FOR RELIEF**

WHEREFORE, Plaintiffs demand judgment against Defendant, as follows:

1. Awarding compensatory and consequential damages in amount to be determined at trial but in no event less than nine hundred thousand (\$900,000) dollars, together with interest.
2. Awarding punitive damages in an amount to be determined at trial but in no event

less than five hundred thousand dollars (\$500,000.), dollars together with all monetary damages permitted by law.

3. Enjoining and restraining DVIR from violating his contractual and legal obligations to the Plaintiffs including, among other things from:

- a.) Withdrawing and/or taking any funds from Slim's Bagels, including cash distributions, salary(ies), benefits (i.e. health insurance payments) and/or expenses (i.e. car payments, gas, tolls, cellular phone bills);
- b.) Opening any new bank accounts, credit accounts, credit card accounts and/or safe deposit boxes for or on behalf of Slim's Bagels pending the final resolution of this matter.
- c.) Removing files, computers, monies, assets, inventory and/or stock from the business facilities and/or financial accounts of Slim's Bagels.
- d.) Interfering with, terminating, assigning and/or assuming into a third party the least agreement and/or leasehold interest maintained by or on behalf of Slim's Bagels for the premises located at 254-31 Horace Harding Boulevard, Little Neck, New York; and
- e.) Interfering with Plaintiff's access to the business facilities of Slim's Bagels and Bialys, Inc. and the Slim's Accounts and records.

4. Compelling DVIR to render an accounting to the Corporation and the Plaintiff.

5. Removing DVIR as an officer to the Corporation pursuant to BCL § 716.

6. Awarding counsel fees in an amount to be determined at trial but in no event less than ninety thousand (\$90,000.) dollars, pursuant to BCL § 626.

7. Awarding costs and disbursement of this action.

8. Granting such other and further relief as this court deems just and proper.

Dated: Jericho, New York  
July 12, 2017



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16266Complaint

**VERIFICATION**

STATE OF NEW YORK )

COUNTY OF NASSAU ) ss.:

EFRAT GAM, being duly sworn, deposes and says:

I am the Plaintiff in the within action; I have read and know the contents of the foregoing Amended Verified Complaint and same is true to my knowledge, except as to those matters therein stated to be alleged on information and belief, and that as to those matters I believe it to be true.

  
\_\_\_\_\_  
EFRAT GAM

Sworn to before me this  
12 day of July, 2017.

  
\_\_\_\_\_  
Notary Public

**RICHARD L. FARLEY**  
Notary Public, State of New York  
No. 02FA4802148  
Qualified in Nassau County  
Commission Expires September 15, 2019

16266Verification4

Index No. 2017- 701298

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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EFRAT GAM and SLIM'S BAGLES & BIALYS, INC.,

Plaintiffs,

-against-

JOSEPH DVIR,

Defendant

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**SUPPLEMENTAL VERIFIED COMPLAINT**

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**NOTE: SERVICE BY FAX NOT ACCEPTED WITHOUT PRIOR AUTHORIZATION**

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**Compliance Pursuant to 22 NYCRR §130-1.1-a**

To the best of the undersigned's knowledge, information and belief formed after an inquiry reasonable under the circumstances, the within document(s) and contentions contained herein are not frivolous as defined in 22 NYCRR §130-1.1-a.

  
\_\_\_\_\_  
Richard L. Farley, Esq.